

The Odisha Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 140 CUTTACK, TUESDAY, JANUARY 27, 2015/MAGHA 7, 1936

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 14th January 2015

No. 416—li-I(B)-4/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th November 2014 in Industrial Dispute Case No. 35 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Hotel Nilachal Ashok, Puri and its Workman Shri Dasarathi Prasad Dash, Store Helper was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 35 OF 2006

Dated the 15th November 2014

Present :

Shri Saroj Kumar Sahoo, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court, Bhubaneswar.

Between :

The General Manager .. First Party—Management
M/s. Hotel Nilachal Ashok, Puri

And

Its Workman, .. Second Party—Workman
Shri Dasarathi Prasad Dash, Store Helper,
H. No. 1/115, P.K. R.I.T. Colony,
Puri, Dist. Puri.

Appearances :

Shri Aditya Mishra & Associates Advocate .. For the First Party—Management

Shri Sushanta Dash, Advocate .. For the Second Party—Workman

AWARD

The Government of Odisha, in Labour & Employment Department, in exercise of powers conferred upon it by sub-section (5) of Section 12, read with clause (c) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the following issues for adjudication by this Court vide their Letter No. 3372—li/1(B)-4/2006-LE., dated the 29th April 2006 :—

"Whether the action of the Management of M/s Hotel Nilachal Ashok, Puri in terminating services of Shri Dasarathi Prasad Dash, Store Helper with effect from the 22nd September 2003 is legal and/or justified ? If not, what relief Shri Dash is entitled to ?".

2. The case of the second party workman, is that Utkal Ashok Hotel Corporation Limited is the owner of Hotel, Nilachal Ashok, Puri is a Corporation established in a joint venture of Central Government and State Government having its registered office at 9 Satrynagar, Bhubaneswar-751 007. The workman is an ex-Serviceman who had appointed under the first party management as Store Helper through Rajya Sainik Board, Odisha, Bhubaneswar. The appointment was through a regular interview and thereafter the second party was posted as a Trainee Store Helper vide letter dated the 7th August 1979. After the training was over, again the second party faced an interview conducted by the management on the 14th March 1989 for which an appointment letter was issued to him on the 16th March 1989 in the scales of pay of Rs. 570-Rs. 790 with effect from the 17th March 1989. Thereafter, the second party was confirmed in the post of Store Keeper. He claimed revision of his pay scale as applicable to ex-Serviceman but the management did not pay any heed. So, the workman had approached the Hon'ble Court vide OJC No. 5409 of 2002, in which summons was issued to the management. After receipt os summons from the Hon'ble Court, the General Manager of the first organisation called the second party to his office on the 28th May 2002 and asked him to withdraw the case. He also threatened the workman to withdraw the case otherwise, he would be dismissed from service. The second party workman did not agree to withdraw the case and left the office. Immediately thereafter, the workman while in his duty, received the suspension order on the ground of shortage of 350 number of soaps in the stock. One P. Mishra was the Store Keeper who continued before this workman joined as Store Helper. All the articles of the store were in custody of the said Store Keeper Shri Mishra. The second party was rendering his service under Shri Mishra. No inventory was made in presence of the workman. The Store Keeper was alone responsible for the shortage of the articles in the Store. The second party had filed a representation to the first party management claiming that Shri P.Mishra was responsible for the shortage and the liability is of the Store Keeper. A letter was issued by the General Manager to the second party on 21st February 2002 and a sum of Rs. 137 was illegally deducted from the salary of the workman. The suspension order was issued with oblique motive and with bias intention only to punish the second party. F.I.R. was lodged at Sea Beach Police Station by the General Manager which was registered as P.S. Case No. 61, dated the 28th May 2002 u/s. 342 and 506 I.P.C. against the workman. Due to illegal acts of the management, the second party workman and his family were subject to harassment. Against the order of suspension by the management, the second party had filed W.P.(C) No. 276 of 2002 before the Hon'ble Court. In the said litigation, the management appeared before the Hon'ble Court but did not pay the subsistence allowance. The management has sanctioned the subsistence allowance to the workman for the period the 28th May 2000 to the 31st December 2000 and adjusted the same towards loan dues of IOB, Puri Branch granted to the workman, without any intimation.

On the 11th June 2002, the management had issued a charge sheet on the basis of F.I.R. lodged by the General Manager and a disciplinary proceeding was initiated by the then Vice-President showing himself as Disciplinary Authority. There is no service rules framed by the management to regulate the service of their workman. The said Vice-President was never appointed as Disciplinary Authority by the management. The charge sheet against the second party is void under law. The second party workman had prayed for stay of the disciplinary proceeding initiated against him by the management in view of the pendency of the criminal case, but no avail. The Enquiring Officer worked at the behest of the General Manager and passed an *ex parte* order in the said enquiry, which has been submitted to the General Manager. The Vice-President illegally terminated the services of the second party by order dated the 22nd September 2013. During the entire proceeding, no subsistence allowance was paid to the second party, for which the workman was not enable to prosecute his case due to want of funds. The disciplinary proceeding is quite illegal. The workman had filed an application before the D.L.O., Puri for conciliation and notice was issued to the workman on the 22nd September 2003. The management to save their skin issued a letter on the 18th March 2004 regarding the subsistence allowance for the period the 1st January 2003 to the 22nd Septemebr 2003 and computed at Rs. 7,204 which was adjusted against the loan of I.O.B and balance amount of Rs. 131 was deposited in the S.B. Account of the workman. It is learnt that the said balance of Rs. 131 was also adjusted towards the balance charge of the Bank. The workman has been acquitted from the criminal case which was filed by the General Manager bearing G.R. Case No. 617 of 2002. The workman has submitted the judgment of the Criminal Court to the management in the conciliation proceeding and demanded for reinstatement but the management did not agree. Hence, the present reference.

3. The case of the first party management is that after the reference was made on the 29th April 2006, only on the 17th February 2009 the second party has filed his claim statement without serving a copy on the management. The said non-supply of copy of the claim statement is violation of statutory provision of I.D. Act, 1947. The reference made by the Government of Odisha in Labour & Employment Department is not maintainable. It is not a fit case in which the matter should be referred to the Labour Court by the Conciliation Officer. The Conciliation Officer has not properly exercised the jurisdiction under the Act. The second party was terminated after a duly constituted domestic enquiry. The first party organisation is a unit property of a joint venture in Utkal Hotel Ashok Corporation Limited wherein the Government of India—ITDC Limited and Government of Odisha-ITDC have composite shares since January, 2014. The first party organisation is not in operation due to financial constraint and several other reasons. It is now a completely defunct hotel. The second party workman who is ex-Serviceman was appointed as Store Helper under the first party management by letter dated the 16th March 1989. As a Sore Helper among other duties and responsibility, the second party was duty bound to make good any loss found during inverntory of the Store. The Store was under the custody of the Store Keeper and the Store Helper. During a physical inventory in the year 2001-2002 the Inventory Committee of the first party organisation found shorgate of some store items and by their report dated the 22nd May 2002, they have informed the management for necessary action. Thereafter, it was decided by the management that both the Store Keeper and second party workman were equally liable for the loss articles and the loss should be realised by recovering from both of them 50-50. After the workman came to know about such decision which was communicated to him on the 28th May 2002 suddenly he

charged the General Manager with abuse and shouted towards him. He also threatened him for dire consequence. Due to such behaviour of the second party, he was placed under suspension immediately. On the same day at about 2-00 P.M., the workman again made a forcible entry inside the office of the General Manager and attacked him with a long kitchen knife and also abused him in filthy language. Due to intervention of the other officers, the General Manager was saved and escaped unhurt. However, he was deeply shocked. The matter was reported to the Police immediately for necessary action. on the 11th June 2002 a charge sheet was issued to the workman for his serious misconduct. Opportunity was extended to the second party workman to defend him during the domestic enquiry conducted by the management. The first party managemetn has complied all the formalities of the domestic enquiry. At last, the workman was terminated from his service with effect from the 22nd September 2003. The terminal benefits have also been paid to him. After enquiry, the Enquiring Officer had submitted his report on the 25th April 2003. A copy of the report was furnished to the second party and a representation from him was also received. The Disciplinary Authority accepted the finding of the enquiry and communicated the proposed punishment to the second party. Although, sufficient opportunity of being heard personally prior to imposition of the punishment was offered to the second party, he did not avail the same. So the proposed punishment was made absolute. The first party management participated in the concillation proceeding before the Concillation Officer but arbitrarily and whimsically, the proceeding was closed. Although, the second party workman has been acquitted in the criminal case, he cannot be exonerated from the charges framed under the domestic enquiry. As the second party workman was terminated from his service after a domestic, it is not a case of retrenchment within the meaning of Section 2(0O) of Industrial Disputes Act, 1947. This Court has no jurisdiction to sit in appeal over the action taken by the Disciplinary Authority in a domestic enquiry. Due to serious misconduct of the second party which includes misappropriation of public money, caused loss of money and demage to the State Government and Central Government being the owner of the first party organisation. The continuation of the seocond party under the employment of the first party organisation will give a wrong signal to the other senior and devoted employees of the Hotel and shall have adverse impact on the overall discipline of the Hotel Management. The punishment of termination of services of the second party workman is just and proper. The first party management has followed the law and principle of natural justice for termination of the second party workman. The second party workman is not entitled to any relief.

ISSUES

4. Taking into consideration of the pleadings of the prties, the following issues are settled:-

- (i) "Whether the reference is maintainable ?
- (ii) Whether the domestic enquirey conducted against the workman by the management was fair and proper ?
- (iii) Whether the action of the managemetn of M/s Hotel Nilachal Ashok, Puri in terminating services of Shri Dasarathi Prasad Dash, Store Helper with effect from the 22nd Setmber 2003 is legal and/or justified ?
- (iv) If not, what relief Shri Dash is entitled to ?"

5. The second party workman is examined as W.W. 1 and Exts. A to Q are marked. Ext. A is the photocopy of letter, dated 21st February 2002 of the management addressed to Accountant in-charge. Ext. B is the photocopy of identity card issued by the Government of India. Ext. C is the photocopy identity card issued by the management. Ext. D is the photocopy of the writ petition filed by the workman for fixation of salary bearing OJC No. 5409 of 2002. Ext. E is the photocopy of the order passed by the Hon'ble Court in Misc. Case No. 6054 of 2002. Ext. F is the photocopy of the judgment passed in G.R. Case No. 617 of 2002. Ext. G is the photocopy of the letter of the workman dated the 5th August 2003. Ext. J is the photocopy of the charge sheet. Ext. K is the photocopy of the dismissal order, dated the 22nd September 2008. Ext. L is the photocopy of the order passed by the Hon'ble Court in W.P.(C) No. 3908 of 2002. Ext. M is the photocopy of the order passed by the Hon'ble Supreme Court of India in SLA No. 18089 of 2005. Ext. N is the photocopy of letter of the workman dated the 24th October 2002. Ext. P is the photocopy of discharge certificate issued by the District Headquarters Hotel, Puri. Ext. Q is the photocopy of the suspension order dated the 28th May 2002.

6. On the other hand two witnesses are examined on behalf of the management and Exts. 1 to 9 are marked. Ext. 1 is the photocopy of the charge sheet, dated the 11th June 2000. Ext. 2 is the photocopy of the enquiry notice. Ext. 3 is the photocopy of enquiry proceeding. Ext. 4 is the photocopy of enquiry report along with forwarding letter. Ext. 5 is the photocopy of representation of the workman, dated the 4th August 2003. Ext. 6 is the photocopy of show cause notice, dated the 29th May 2003. Ext. 7 is the notice published in daily Oriya newspaper, Dharitri, dated the 2nd August 2003. Ext. 8 is the reply of the workman, dated the 4th August 2003. Ext. 9 is the termination letter, dated the 22nd September 2003.

FINDINGS

7. *Issue No. (i)*—The second party workman has challenged the termination of his service by the first party management. The first party management on the other hand, challenged the maintainability of the reference made by the Government to this Court for adjudication on several grounds. Admittedly, the Court of Presiding Officer, Labour Court is bound to adjudicate the industrial dispute between the parties referred by the Government being the creature of the statute under Industrial Dispute Act, 1947. This Court has no jurisdiction or authority to behind the reference. Hence, the challenged by the first party management the reference made by the Government in this case is not maintainable, is not accepted. This Court is to adjudicate the industrial dispute between the parties on the reference. This issue is answered against the first party.

8. *Issue No. (ii)*— In this case, admittedly the second party workman has challenged his termination of service by the first party management on the ground that the domestic enquiry conducted by the management is not fair and proper and it is also illegal. Taking into consideration the statement of claim filed by the second party workman and the written statement of first party management, the issues were framed. Out of those issues, Issue No. (ii) relates to whether the domestic enquiry conducted against the workman by the management was fair and proper ? After hearing the parties on that issue this court has passed order on that issue vide Order No. 55, dated

the 11th February 2013. In the said order, this Court has specifically hold that the domestic enquiry conducted against the workman is fair as well as proper.

9. Although the second party was examined as W.W. 1 on issue No. (ii) earlier on the 5th November 2012, again he was examined on the 16th July 2013 on merit of the case. In his affidavit evidence the second party workman W.W. 1 deposed that the continuance of domestic enquiry by the management is bad due to his acquittal in the criminal case bearing G.R. Case No. 617 of 2002 of the learned S.D.J.M., Puri. He further deposed that as he claimed to raise his basic pay by filing litigations before the Hon'ble Court against the management, he has been victimised in this case by awarding punishment of termination in the domestic enquiry. The second party workman has relied on decisions reported in (1996) III LLI 740 Gouhati-Jagadish Chandra Mandloi Vrs. Oil and Natural Gas Commission and others and submitted that as he has been acquitted in the Criminal case, he cannot be awarded the punishment of termination by the first party management. The facts of the case relied on by the workman is totally different from this case. In the case relied on the charge framed in the domestic enquiry is similar to the charge in the criminal case. Ext. 1 is the charge sheet which was issued to the workman by the management in the domestic enquiry. Ext. F is the judgment passed by the learned S.D.J.M., Puri on the 19th April 2004 in G.R. Case No. 617 of 2002. It appears that charge No. 4 of Ext. 1 i.e. charge sheet is the same which relates to the criminal case. The other charges of domestic enquiry were not the charges in the criminal case. So it cannot be said that the charges of the criminal case are similar to the charges in the domestic enquiry. On the other hand, it is clear that out of the charges in the domestic enquiry only one charge relates to the criminal case. The workman also relied on a decision reports in (1994) Supp. 3 SCC 674 Sulekha Chand and Salekha Chanda Vrs. Commissioner of Police and submitted that once the acquittal in the criminal case was on merit, the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for departmental enquiry is obviated. On the other hand it is the settled law that though the delinquent official may get an acquittal on technical grounds the authorities are entitled to conduct departmental enquiry on self same allegations and take appropriate disciplinary action. Admittedly, the workman has been acquitted from the criminal charge by the Criminal Court, on merit. However, it is clear from the materials on record that there are a lot of other charges against the workman in the domestic enquiry.

10. The learned counsel for the first party management has relied on the decisions passed in Civil Appeal No. 5179 of 2004 decided on the 11th August 2004 Allahabad District Co-operative Bank Limited, Allahabad Vrs. Vidhya Varidh Mishra, 2006 LLR 268 Chairman-cum-M.D., T.N.C.S. Corporation Limited Vrs. K Meera Bai, 2006 LLR 801 M.K. Dange Vrs. Chairman-cum-Managing Director, O.N.G.G., New Delhi and others and 2006 LLR 998 M. Bhopal Reddy Vrs. Labour Court 1 Hyderabad and another and submitted that it is settled law that in a disciplinary enquiry a conclusion different from that arrived at by a Criminal Court may be arrived at. The burden of proof required to be established guilt in a criminal court is not required in disciplinary proceeding. He further submitted that the management was entitled to proceed with the departmental proceeding against the workman in spite of the acquittal of the petitioner in criminal case. After going through, the aforesaid pronouncements and the facts of this case it is clear that the domestic enquiry conducted by the management is just and fair although the workman is acquitted from the criminal case.

11. The further submission of the workman is that the punishment imposed by the management is disproportionate to the charge established against him. He relied on a decision reported in (2008) 12 SCC 726 Mavji C. Lakum Vrs. Central Bank of India. No doubt this court can go into the question of evidence or the quantum of punishment even if the enquiry is held to be fair and proper. Under Section 11-A of Industrial Dispute Act, 1947 this Court can interfere in the punishment imposed by the Disciplinary Authority if it is not satisfied with the findings arrived at by the Enquiring Officer and the punishment imposed by the management is highly disproportionate to the degree guilt of the workman concerned. The first party management has relied on decisions reported in 2011 (131) FLR 1019 Panchmahala Vadodra Gramina Bank and others Vrs. D.M. Parmar, 2006 LLR 268 Chairman -cum-M.D., T.N.C.S.. Corporation Ltd., Vrs. K. Meera Bai, 2005 (1) ALT 18 (SC) Divisional Controller, K.S. R.T.C. (NWKRTC) Vrs. A.T. Mane and 2008 LLR 121 U.P. Road Transport Corporation Vrs. Binod Kumar and submitted that the management has lost confidence on the workman who has been found guilty for misappropriation of the property of the management for which the order of termination passed in the domestic enquiry conducted against the workman is just and proper. Admittedly, the second party workman did not attend the domestic enquiry conducted against him by the management, in spite of several notice including a paper publication. It is also admitted that the enquiring officer has submitted his report to the Disciplinary Authority after examination of the ocular testimony of the witnesses and documentary evidence no record. The Ext. 6 is the show cause notice issued by the management dated the 29th May 2003 calling for a show cause from the workman why his service should not be terminated. The said notice was sent to the workman but due to non-service of the same there was a paper publication calling for a show cause from the workman why he should not be terminated from the service. Ext. 7 is the said notice published in the daily Oriya newspaper Dharitri on the 2nd August 2003. Ext. 8 is the reply submitted by the second party workman on the 4th August 2003. Paragraph-4 and 5 of the said reply of Ext. 8 are as follows :—

“That earlier I have repeatedly informed you as regards show cause notice to be issued to me and your allegation or avoiding show cause notice is not correct on the facts of the case.

Therefore, I pray that your authority need not worry about the collection of my show cause notice by me as the matter is subjudice before the Hon'ble High Court. Any show cause is most likely affect the writ petition pending in the High Court.”

From the show cause Ext. 8 submitted by the workman it is clear that he was aware of the second show cause notice Ext. 7 i.e.paper publication of the management but he did not file the show cuse as to why he should not be terminated from service. So it is also clear that in spite of several opportunities given to the workman he did not avail the same. This Court has already hold that the domestic enquiry conducted by the management against the workman was just and fair. Ext. 4 is the copy of enquiry report. It is found by the Enquiring Officer that workman is found guilty for misconduct of wilful insubordination, disobedience, dishonesty in connection with employer's business, loss of employer's goods, habitual breach of trust, riotous or disorderly behaviours in the working hours. Taking into considerations the charges under which the workman is found guilty. In my opinion, the punishment of dismissal imposed by the Disciplinary Authority on the second party workman is just and proper. Issue No. iii is answered accordingly.

12. Issue No. (iv)—Now it is to be seen whether the second party workman is entitled to any other relief or not. Under issue No. (ii), it has been held by this Court that the domestic enquiry conducted against the workman was fair and proper. So also, under issue No. (iii), it has been further held by this Court that the action of the management in terminating the service of the second party workman with effect from the 22nd September 2003 is legal and justified. So, it is clear from the evidence on record that the second party workman is not entitled to any relief. This issue is answered accordingly.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. K. SAHOO

15-11-2014

Presiding Officer

Labour Court, Bhubaneswar

S. K. SAHOO

15-11-2014

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

M. NAYAK

Under-Secretary to Government